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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-513

SAVERIO COBUZZI,

Petitioner,

v.

STATE OF CONNECTICUT

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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OPINION BELOW

The opinion of the Connecticut Supreme Court is attached to Petitioner's Brief as an Appendix. It is published in the Connecticut Law Journal, July 13, 1971, Vol. XXXIII No. 2 page 1.

CONSTITUTIONAL, STATUTORY AND OTHER PROVISIONS

Fourth and Fourteenth Amendments to the Constitution of the United States, Appendix p. A-1.

Section 14-217, Connecticut General Statutes, Revision of 1958, Appendix p. A-1.

Section 619, Connecticut Practice Book, Revision of 1963, Appendix p. A-2.

QUESTION PRESENTED

Whether provisions of the Fourteenth Amendment to the Constitution of the United States were violated when a policeman arrested petitioner after having been informed by police radio that another policeman had seen in petitioner's car a bag of coins and had later discoverd that a coin shop in the area where he had seen petitioner had been broken into.

The Record published for the appeal to the Connecticut Supreme Court has been filed by petitioner, and references to the Record are designated herein by the letter "R." The Record contains the Finding made by the trial court, and references to the Finding are designated herein by the letter "F."

STATEMENT OF THE CASE

Robert L. Boske was the owner of the Hartford Stamp and Coin Company located on Church St., Hartford. (F. par. 1) Before he locked up on the evening of May 12, 1967, Boske observed that his cash register contained three Kennedy half dollars and a quantity of change mostly pennies. (F. par. 29) The next time he entered his shop, it was in the early morning hours of May 13 and in response to a call from police. (F. par. 28) His shop had been broken into and his cash register had been pried open. (F. par. 28) Some of its brown paint had been chipped away. (F. par. 30)

At about 3:30 a.m. on May 13, Hartford Policeman Edward C. Hart, Jr., first saw the petitioner at the corner of Church St. (F. pars. 3, 5) He was in a car with another. (F. par. 3) Hart noticed that the vehicle was cruising in a circuitous route (F. par. 4-8) at a time when the area was normally deserted. (F. par. 9) He stopped it for a license check and found the car was operated by the petitioner. (F. par. 8) On the floor in the rear of the auto was an

open brown bag in which Hart saw a quantity of pennies, a pair of pliers and black gloves. (F. par. 11)

Later Hart found the break at the coin shop. (F. par. 15) Remembering what he had seen in Cobuzzi's car, he sent a message as to his observations. (F. pars. 15, 25) Officer Bernard Sullivan later arrested Cobuzzi. (F. par. 26) The pair of pliers found in Cobuzzi's car had a chip of paint stuck on its nose that matched the color of the cash register at the coin shop. (F. pars. 30, 32) The pliers fit into an indentation on the cash register caused by the implement used to pry open the register. (F. par. 33)

ARGUMENT

I.

THE POLICE DID NOT ARREST PETITIONER WHEN HIS CAR WAS STOPPED FOR ROUTINE INVESTIGATION.

Section 14-217 of the General Statutes of Connecticut (App. p. A-1) provides, in part, that no person who is operating a motor vehicle, when requested by any officer in uniform, shall refuse to give his name and address or to produce his motor vehicle registration certificate and operator's license. This statute is essentially regulatory and is obviously directed at all persons who operate motor vehicles on the streets of Connecticut.

In a case arising out of a roadblock check, the statute was held to be a valid exercise of police power, since the preservation and safety of users of our public highways are a matter of vital public concern.

State v. *Smolen*, 4 Conn. Cir. Ct. 385, certification denied 155 Conn. 720, 231 A.2d 283, cert. den. 389 U.S. 1044, 19 L. Ed. 2d 835, 88 S. Ct. 787.

Virtually every State has provided by statute that a motorist must carry his operator's license with him at all times and display it upon the demand of a police officer.

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A similar statute requiring, as does Section 14-217, that a motorist involved in an accident stop and give his name and address was found to be regulatory.

California v. *Byers*, ... U.S. ....., 29 L. Ed. 2d 9, 91 S. Ct. ..... .

This case was tried to the Court, and the Court made a finding of facts under the Connecticut rules of practice. (App. p. A-2) The Court found that Policeman Hart saw Cobuzzi operating a motor vehicle early on the morning of May 13, 1967, with a passenger in the car, on Main and Church Streets in Hartford, about 150 to 200 feet from the Hartford Stamp and Coin Company. (R. 5, pars. 1-3) Hart saw the car three times in the same area within a few minutes and twice followed it. (R. 5, par. 4, R. 6, pars. 5, 6) Hart stopped the car at 3:45 a.m., about 15 minutes after he had just seen it. (R. 6, par. 7) The neighborhood is in a commercial area ordinarily deserted at that time of day, and the presence of the car there at that time prompted the routine check. (R. 6, par. 9) Hart, acting under Section 14-217, requested the license and registration and saw that the car was registered in the name of Saverio Cobuzzi, the petitioner. (R. 6, par. 8) He saw on the floor an open paper bag containing some pennies, gloves and pliers. (R. 6, par. 11) He did not detain Cobuzzi, (R. 6, par. 12) but he checked commercial establishments in the area and found that the Hartford Stamp and Coin Company had been broken into and that the cash register had been pried open. (R. 6, pars. 12-14)

Upon these facts, the Court concluded that Hart stopped the car in a routine check authorized under Section 14-217 and that he did not conduct a search or seizure. (R. 9, pars. 40-41) It also concluded that due to the environment and the hour of the morning and the circumstances, it was reasonably necessary for Hart to determine if the petitioner's conduct was unlawful and in the process to seek his identity and verify it. (R. 9, par. 42) The petitioner abandoned his claim that the Court erred in finding that Hart, acting under Section 14-217, requested petitioner's license and registration and that Hart did not detain Cobuzzi. (Opinion of Connecticut Supreme Court, Petitioner's Appendix p. 22)

He did not attack any of the remaining findings of fact relating to Hart's action and observations. (R. 26) Petitioner assigned error in the conclusion that Hart stopped the car in a routine check authorized under Section 14-217 and that it was reasonably necessary for Hart to determine if petitioner's conduct was unlawful and to seek his identity. (R. 26, par. 5) These assignments were not briefed and, in any event, the Connecticut Supreme Court held that Hart was justified in stopping the car and in making a license and registration check. (Opinion of Connecticut Supreme Court, Petitioner's Appendix p. 23)

Governmental interest in effective crime prevention and detection underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for the purpose of investigating possibly criminal behavior even though there is no probable cause to make an arrest.

Terry v. *Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868.

Under the facts of this case, the court correctly concluded that it was reasonably necessary for the policeman to stop petitioner because of the environment, the early hour of the morning and the circumstances. The Connecticut

Supreme Court held that the stop was legally justified after the policeman noted the circuitous route the vehicle was taking in a commercial area ordinarily deserted in the early morning. This was not an investigative seizure, as petitioner terms it in his Brief. It was instead a routine investigation, and it stopped short of an arrest. There was no intent to detain petitioner and the Court found that he was not detained. This kind of routine stop was permissible and justified under the circumstances.

Rios v. *United States*, 364 U.S. 253, 4 L. Ed. 2d 1688, 80 S. Ct. 1431.

Terry v. *Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 909, 88 S. Ct. 1868.

After he had stopped the car, the policeman acted under the authority of Section 14-217 to identify the owner and operator of the vehicle. This was surely a valid inquiry under a statute which is regulatory and a valid exercise of police power. Without it, the police would not have known who the driver was and the petitioner, who had in fact committed a crime, would have gone undetected.

II.

THE POLICE HAD PROBABLE CAUSE FOR MAKING AN ARREST OF PETITIONER.

The actual offense which had been committed by petitioner was not discovered until later. The policeman then caused to be put out over the radio what his observations had been. Petitioner was arrested by another policeman acting upon the information which he had received. Probable cause

is to be based upon the collective information of the police rather than that of only the officer who makes the arrest.

Jones v. *United States,* 271 F.2d 494, cert. den. 362 U.S. 944, 4 L. Ed. 2d 771, 80 S. Ct. 809.

Probable cause is the sum total of layers of information and the synthesis of what the police have heard, what they know, and what they observe as trained officers, what must be weighed is the laminated total, and not individual layers.

Smith v. *United States,* 358 F.2d 833, 837, cert. den. 386 U.S. 1008, 18 L. Ed. 2d 448, 87 S. Ct. 1350.

The second policeman was entitled to act upon information received by radio from other police.

Whiteley v. *Warden,* 401 U.S. ....., 28 L. Ed. 2d 306, 91 S. Ct. 1031.

III.

THE POLICE DID NOT MAKE AN UNREASONABLE SEARCH AND SEIZURE OF PETITIONER'S VEHICLE.

The seizure made by the arresting officer was justified as incidental to the arrest he made when he detained petitioner. In any event, the policeman would have had probable cause to search the car under the circumstances in the belief that it contained contraband.

Chambers v. *Maroney,* 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975.

There was no confession, and the warnings required by *Miranda* v. *Arizona,* 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602, are not applicable.

CONCLUSION

Under all the circumstances, police officer Hart was justified in stopping petitioner and the police later had probable cause to arrest him, so that the petition ought to be denied.

Respectfully submitted,

State of Connecticut

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APPENDIX

Fourth Amendment to the Constitution of the United States

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fourteenth Amendment to the Constitution of the United States

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 14-217, *General Statutes of Connecticut, Revision of* 1958

"Operator to give name and show or surrender license and registration. No person who is operating or in charge of any motor vehicle, when requested by any officer in uniform, or, in the event of any accident in which the car he is operating or in charge of is concerned, when requested by any other person, shall refuse to give his name and address or the name and address of the owner of such motor vehicle or give a false name or address, or refuse, on demand of such officer or other person, to produce his motor vehicle registration certificate and operator's license or to permit such officer or such other person to take the operator's

license and registration certificate in hand for the purpose of examination, or refuse, on demand of such officer or such other person, to sign his name in the presence of such officer or such other person; and no person shall refuse to surrender his license to operate motor vehicles or the certificate of registration of any motor vehicle operated or owned by him or the number plates furnished by the commissioner for such motor vehicle on demand of the commissioner or fail to produce his license when requested by a court. Any person who violates any provision of this section shall be fined not more than fifty dollars or imprisoned not more than thirty days or both."

Section 619, *Connecticut Practice Book, Revision of* 1963

"Form and Contents — The finding shall set forth — so far as necessary to present the questions which the appellant desires reviewed — in separate and continuously numbered paragraphs, under the heading 'Facts Found,' all facts which the court finds proven which are claimed to be relevant and material to the questions of law raised, and, under separate headings, the conclusions drawn by the court from the facts found, . . ."